

Rule 56.2. Judgment upon an Agency Record for an Action Described in 28 U.S.C. § 1581(c)

(a) Proposed Briefing Schedule and Joint Status Report. The judge may modify the following procedures as appropriate in the circumstances of the action, or the parties may suggest modification of these procedures.

Retention of or access to business proprietary information in the administrative record is governed by Rule 71(c).

Any motion to intervene as of right shall be filed within the time and in the manner prescribed by Rule 24.

Any motion for a preliminary injunction to enjoin the liquidation of entries that are the subject of the action shall be filed by a party to the action within 30 days after the date of service of the complaint, or at such later time, for good cause shown. Notwithstanding the first sentence of this paragraph, an intervenor shall file a motion for a preliminary injunction no earlier than the date of filing of its motion to intervene and no later than 30 days after the date of service of the order granting intervention, or at such later time, but only for good cause shown. Prior to the filing of the motion, the moving party shall consult with all other parties to the action in accordance with Rule 7(b).

No later than 30 days after the filing of the record with the court, the parties, including proposed intervenors, shall file with the clerk (1) a Joint Status Report, and (2) a proposed briefing schedule. The Joint Status Report shall be signed by counsel for all parties and shall set forth answers to the following questions, although separate views may be set forth on any point on which the parties cannot agree:

1. Does the court have jurisdiction over the action?
2. Should the case be consolidated with any other case, or should any portion of the case be severed, and the reasons therefor?

3. Should further proceedings in this case be deferred pending consideration of another case before the court or any other tribunal and the reasons therefor?

4. Is there any other information of which the court should be aware at this time?

The proposed briefing schedule shall indicate whether the parties (1) agree to the time periods set forth in Rule 56.2(d), (2) agree to time periods other than the periods set forth in Rule 56.2(d), or (3) cannot agree upon a time period. In the event the parties cannot agree upon a time period, the parties shall indicate the areas of disagreement and shall set forth the reasons for their respective positions.

After the Joint Status Report and proposed briefing schedule are filed, the judge promptly shall enter a scheduling order.

(b) Cross-Motions. When a motion for judgment upon an agency record is filed by a party, an opposing party shall not file a cross-motion for judgment upon an agency record. If the court determines that judgment should be entered in favor of an opposing party, it may enter judgment in favor of that party, notwithstanding the absence of a cross-motion.

(c) Briefs.

(1) In addition to the other requirements prescribed by these rules, the briefs submitted on the motion, either contesting or supporting the agency determination, shall include a statement setting forth in numbered paragraphs:

(A) the administrative determination sought to be reviewed with appropriate reference to the Federal Register; and

(B) the issues of law presented together with the reasons for contesting or supporting the administrative determination, specifying how the determination may be arbitrary, capricious, an abuse of discretion, not otherwise in accordance with law, unsupported by substantial evidence; or,

how the determination may be unwarranted by the facts to the extent that the agency may or may not have considered facts which, as a matter of law, should have been properly considered.

(2) The brief shall include the authorities relied upon and the conclusions of law deemed warranted by the authorities. All references to the administrative record shall be made by citing the portions of the record relevant to the factual or legal issues raised. Citations shall be by page number of the transcript, if any, and by specific identification of exhibits together with the relevant page number. The brief also shall include a table of contents and a table of authorities.

(3) Within three days of the date of filing of a brief, the party submitting the brief shall file an appendix containing a copy of those portions of the administrative record cited in the brief.

(d) Time to Respond. Unless the scheduling order otherwise provides, a motion for judgment upon an agency record shall be served within 60 days after the date of service of the scheduling order. Responsive briefs shall be served within 60 days after the date of service of the brief of the moving party. The moving party shall have 25 days after service of the response to the motion to serve a reply. No other papers or briefs shall be allowed, except by leave of court.

(e) Hearing. Upon motion of a party, subject to the time limitations set forth in Rule 7(c), or upon its own initiative, the court may direct oral argument on a motion for judgment upon an agency record at a time and place designated in Rule 77(c). The moving party, after consultation with all other parties to the action, shall request a hearing date that is not more than 30 days after the date of service of the reply memorandum, except for good cause shown as to why the hearing should be scheduled on a later date.

(f) Partial Judgment. After considering a motion filed under this rule, the court may grant

judgment in whole or in part in favor of any party.

(g) Voluntary Dismissal--Time Limitation. In an action described in 28 U.S.C. § 1581(c), a plaintiff desiring to voluntarily dismiss its action in accordance with Rule 41(a)(1)(A), shall file a notice of dismissal within 30 days after the date of service of the complaint. In the event plaintiff desires to dismiss its action more than 30 days after the date of service of the complaint, a stipulation of dismissal shall be filed in accordance with Rule 41(a)(1)(B), or if circumstances warrant intervention by the court, in accordance with Rule 41(a)(2).

PRACTICE COMMENT: Provided its requirements are followed, Rule 5(h) allows for the filing of a non-confidential version of a brief provided for in this rule, and a confidential version correcting the designation of business proprietary information in the original submission, one business day after the original filings under this rule.

(Added Sept. 25, 1992, eff. Jan. 1, 1993; and amended Oct. 5, 1994, eff. Jan. 1, 1995; May 27, 1998, eff. Sept, 1998; Jan. 25, 2000, eff. May 1, 2000.)